

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: October 12, 2009

to: Stephen Amadio
(SE:S:C:CP:ET)

from: Special Counsel to the Associate Chief Counsel
(Procedure & Administration)

subject: Taxpayer Representative Compliance Checks

This memorandum is in response to your request for assistance. You have asked whether a Collection employee may access Service's Integrated Data Retrieval System database IDRS to verify that a taxpayer's authorized representatives are in compliance with their own filing and payment obligations. For the reasons that follow, we recommend that the Collection employees not access any Service database to determine whether the authorized representatives are in compliance with their own filing and payment obligations in the circumstances described below.

FACTS

Taxpayer with unpaid tax liabilities engages one or more individuals who are authorized to practice before the Service to represent the taxpayer with respect to these liabilities. Taxpayer submits a Form 2848, *Power of Attorney and Declaration of Representative*, notifying the Service of the taxpayer's decision to be represented with respect to this matter. Collection employee assigned to the taxpayer's case verifies with the Office of Professional Responsibility and the representatives' state licensing officials website that the representatives are eligible to practice before the Service (i.e., the representatives are attorneys, CPAs, enrolled agents, etc. who have not been disbarred or suspended).¹

¹ Paragraph 5.1.1.7(3) of the Internal Revenue Manual provides that collection personnel may verify a representative's eligibility to practice before the Service to ensure that the representative is authorized to act for the taxpayer and that the Service can disclose return information within the scope of the tax matters for which the

Nevertheless, because the Collection employee understands that the OPR can discipline the representatives if the representatives are not in compliance with their own filing and payment obligations, the employee asks his manager whether he should access IDRS to determine whether the representatives are current with respect to their own filing and payment obligations.

LAW and ANALYSIS

Section 6103 provides that returns and return information (as defined in section 6103(b)(2)) are confidential and generally may not be disclosed except as expressly authorized by the Code. There are, however, exceptions to the general rule of confidentiality. Section 6103(h)(1) provides, for example, that return or return information shall, without written request, be open to inspection or to disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

Additionally, the Taxpayer Browsing Protection Act, which added section 7213A to the Code, provides that willful unauthorized access or inspection of non-computerized taxpayer records, including hard copies or returns, as well as computerized information, is a crime, punishable upon conviction, by fines, prison terms and termination of employment. Pub. L. 105-35, 105th Congress, H.R. 1226 (1997). Section 7213A(a)(1) makes it unlawful for any officer or employee of the United States, or any person described in section 6103 (l)(18) or (n) or officer or employee of such person, to willfully inspect, except as authorized in title 26, any return or return information. Section 7213A references section 6103(b) with respect to the definitions for “return” or “return information.” Section 6103(b)(2)(A) defines “return information” as “a taxpayer’s identity, the nature or source, or amount of his income....whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or proceeding, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possibility existence, of liability...”(emphasis supplied).

The Service’s policy on access to paper and electronic taxpayer records is that employees are allowed access only to taxpayer records when the information is needed to carry out their tax administration duties. IRM 4.10.1.6.11(1). Employees may have a

taxpayer has authorized representation. Individuals are required to certify their eligibility to practice before the Service on the Form 2848. When verifying the eligibility of attorneys to practice before the Service, employees may check the applicable state bar website for current license or bar membership information and the OPR which provides a search feature on its website to indicate whether a practitioner has been suspended or disbarred from practice before the Service. IRM 4.11.55.1.2.2(3). Similarly, when verifying the eligibility of CPA’s to practice before the Service, employees may check with the state accounting board and OPR.

need to access returns and return information when there is a need to know the information for their tax administration duties, notwithstanding that there is no formal assignment of a case directly corresponding to the entity or individual being researched. Employees, for example, may (1) access joint income tax return information when only one spouse owes delinquent assessments; (2) use IDRS to cross reference for dependents on taxpayer returns; or (3) access IMF to determine non-filer status of husband and/or wife. As a result, employees may continue to retrieve data or conduct research as long as there is a justification or a necessity to search for this information in order to carry out the employee's tax administration duties. IRM 4.10.1.6.11(5). This exception does not apply when the need to access the data, however, falls outside of the employee's tax administration duties, notwithstanding that it falls within the tax administration duties of another Service employee.

The nexus between the contemporaneous access of the representatives' information on IDRS and the Collection employee's tax administration duties is questionable. Although the taxpayer submitted a Form 2848 naming these individuals as his representatives, the representatives account information on IDRS will provide information of no importance vis-à-vis the taxpayer's case. Thus, unless and until the employee is assigned a case concerning the representatives' tax liabilities or another matter arises making it appropriate for the employee to access the representatives' IDRS accounts, any additional compliance review beyond verification of the eligibility to practice raises concerns that the resulting accesses are inconsistent with the congressional intent of sections 6103 and 7213A.² Accordingly, we suggest that Collection employees verify that the individuals identified as the taxpayer's authorized representatives are eligible to practice before the Service using the procedures set forth in IRM 4.11.55.1.2.2(3), but that the employee refrain from confirming the representatives' own filing and payment compliance when the taxpayer has submitted a Form 2848 and employee is merely verifying the representatives' eligibility to practice.

Please call Amy Mielke (202) 622-7371 if you have any further questions.

² Nevertheless, becoming a tax practitioner will not "protect" an individual from audit. The Service may have legitimate reasons to inquire into a practitioner's tax liabilities. These reasons are too numerous and varied to discuss here. But, nothing in this advice should be taken to limit the discretion of the Service to appropriately inquire into the compliance of any individual, including a person who represents taxpayers, for any legitimate reason using recognized and appropriate procedures.